

FILED #1

SEP 21 2018 dr ifp

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Carl Wescott
2 PO Box 190875
3 San Francisco, CA 94966
4 *in propria persona*
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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION

9 C V 18 5842 EDL

10 Carl Alexander Wescott,

11 Plaintiff

12 ----- versus -----

13 Joseph Martin and

14 Leigh Lightfoot,

15 Defendants

16 And DOES 1 to 25

) Case Number _____

) COMPLAINT FOR BREACH OF

) CONTRACT; BREACH OF SETTLEMENT;

) BREACH OF THE COVENANT OF GOOD

) FAITH AND FAIR DEALING; INDUCING

) BREACH OF TRUSTEE; BREACH OF

) FIDUCIARY DUTY

) ACCOUNTING REQUESTED

) JURY TRIAL REQUESTED

20 Plaintiff Carl A. Wescott, proceeding *pro se*, complains of Defendants Joseph Martin and
21 Leigh Lightfoot. The Plaintiff filed an earlier version of this lawsuit in District Court and the
22 Defendants filed a Motion to Dismiss. The Plaintiff knew about the motion and its October
23 hearing date but hadn't seen the motion as he had not received moving papers and thus the
24 Plaintiff did not reply in time to the MTD, and the case was dismissed without prejudice. In
25 support of his complaint, the Plaintiff states as follows:
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COMPLAINT FOR BREACH OF CONTRACT; INCLUDING BREACH OF TRUST;
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING; INDUCING BREACH OF TRUSTEE;
BREACH OF FIDUCIARY DUTY

PARTIES

1. The Plaintiff is an individual who resided in San Francisco, California for many years and is still in San Francisco.
2. The first Defendant, Joseph Martin ("Martin") is an individual presently living in Florida.
3. The second Defendant, Leigh Lightfoot ("Lightfoot") also presently lives in Florida. Martin and Lightfoot were married during the initial years of the parties' malfeasance, and may still be married.
4. Martin undertook all acts complained of herein for the benefit of the marital community with Lightfoot. All acts complained of herein were undertaken by Lightfoot for the benefit of the marital community with Martin. Martin and Lightfoot worked closely together in committing the fraudulent acts and breaches of duty complained of herein and will be referred to collectively as "Defendants".
5. In addition, upon information and belief, there are more Defendants currently unknown to Plaintiff, which shall emerge with the benefit of legal discovery. Plaintiff is informed and believes and thereon alleges that at all times material to this Complaint, Mr. Martin and Ms. Lightfoot, as individuals, in addition to acting for himself and herself and on his and her own behalf individually, as well as for the benefit of the marital community, are and were acting as the agents, servants, employees, and/or representatives of, and with the knowledge, consent, and permission of, and in conspiracy with, each and all of the Defendants and within the course, scope, and authority of that agency, service, employment, representation, and conspiracy. Plaintiff

**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; 2
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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1 further alleges on information and belief that the acts of each of the Defendants were
2 fully ratified by each and all of the Defendants. Specifically, and without limitation,
3 Plaintiff alleges on information and belief that the actions, failures to act, breaches,
4 conspiracy, and misappropriations alleged herein and attributed to one or more of the
5 specific Defendants were approved, ratified, and/or done with the cooperation and
6 knowledge of each and all of the Defendants.
7

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10 **JURISDICTION**

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12 6. This Court has jurisdiction pursuant to 28 USC 1332, there being diversity of
13 citizenship and the amount in controversy exceeding \$75,000 exclusive of fees and
14 costs.
15

16
17 **VENUE**

18
19 7. Venue is proper in this Court because the parties' initial meetings and the signing of the
20 contract was in San Francisco, California. Further, agreement of the parties calls for
21 any dispute to be resolved in the City of San Francisco and State of California.
22
23 8. This case is about a contract to purchase and develop property in Honduras. The
24 Plaintiff trusted the Defendants with his proprietary business methods and advanced
25 large sums to money to them to serve as his agents on the ground as part of a five-year
26 contract. As part of the contract Plaintiff lent the Defendants a six-digit sum. The
27 Defendants performed poorly, absconded from the country prematurely, have not
28

**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; 3
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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1 repaid Plaintiff's loans, and have breached fiduciary duties to the Plaintiff. These acts
 2 not only have cost Plaintiff significant sums of money and significant time and
 3 opportunity cost, but also have destroyed any chance Plaintiff had to earn millions of
 4 dollars in profit on the project.
 5

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 7 A. The Parties' Contract
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 10 9. In 2006 the Plaintiff was a successful international real estate developer having recently
 11 sold out multiple phases of a residential development in Vilcabamba, Ecuador. The
 12 Plaintiff realized that Central and South American venues were increasingly attractive
 13 to American expatriates because of the relatively low cost of living and the climate and
 14 scenic beauty. The Plaintiff's business model was to identify promising parcels and do
 15 the preliminary work of development, hiring architects, making initial infrastructural
 16 improvements, obtaining permits, and marketing the development concept. With the
 17 permits the value of properly obtained land could go up 2 to 10+ times. The Plaintiff
 18 could then borrow against the improved value of the land to fund infrastructure
 19 improvements and sell lots (and sometimes houses, too) through marketing channels at
 20 a substantial profit.
 21

22
 23 10. The Plaintiff's business methods (hereafter "Plaintiff's Trade Secrets") were
 24 proprietary and protectable under the California Trade Secrets Act, California Civil
 25 Code 3426 et seq. At all times, the Plaintiff took all reasonable precautions to protect
 26 Plaintiff's Trade Secrets.
 27
 28

1 11. The Plaintiff's plan was to ramp up to multiple projects which he would identify, using
2 his expertise, building on his track record of success. If the Plaintiff was to obtain the
3 scale he required, he would need trustworthy agents and partners on the ground at each
4 location.

5
6 12. The Plaintiff initially met Joseph Martin in the software industry. Martin mentioned
7 that he and Lightfoot owned multiple properties in Roatan, Honduras.

8
9 13. Defendants later represented themselves as competent and experienced in sales and
10 property management. Martin and Lightfoot planned to retire in Honduras within about
11 five years of the parties' initial discussions, and already knew the area well and had
12 some relevant contacts.

13
14 14. Based on those representations, the Plaintiff entered into a five-year contract with the
15 Defendants to manage a development project in Honduras ("the Project") commencing
16 in 2007. The Project, if executed properly, would have led to millions of dollars in
17 profits for the Plaintiff (and an amount to Defendants that would have exceeded the
18 amounts loaned to Defendants).

19
20 15. Under the terms of the parties' contract, the Plaintiff advanced (e.g. loaned) the
21 Defendants relocation expenses and living expenses of \$4,000 per month.

22
23 16. Under the terms of the contract and the law of California, the Defendants were agents
24 of the Plaintiff, entrusted with the responsibility to act on the Plaintiff's behalf and to
25 receive monies for the benefit of the Plaintiff. The Defendants were also entrusted with
26 substantial loans from the Plaintiff against future profits of the Project. Accordingly,
27 the Defendants were fiduciaries who owed the Plaintiff a duty of honesty, transparency,
28 fair dealing and best efforts in discharging their contractual responsibilities.

**COMPLAINT FOR BREACH OF CONTRACT; INCLUDING BREACH OF TRUST; 5
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1 17. The Plaintiff also entrusted the Defendants with Plaintiff's Trade Secrets with a proper
2 and limited disclosure in the context of the parties' contractual and fiduciary
3 relationship.

4
5 18. The Plaintiff invested approximately \$1,100,000 to buy the land for the Property and
6 over \$500,000 in design and engineering fees. When loans to the Defendants, travel,
7 legal expenses and other out-of-pocket expenses are added in, the Plaintiff invested at
8 least \$2,000,000 in the Project. With the accounting requested herein, the exact sum
9 shall emerge.
10

11 19. For the first three years of the five-year contract, the Defendants lived in Honduras.
12 However, the Defendants essentially began their planned retirement in Honduras about
13 five years early. The Defendants did not devote adequate time to the Project with the
14 result that they never even obtained the preliminary permits for a residential
15 subdivision on the subject property that Plaintiff had purchased.
16

17 20. Plaintiff later obtained the needed permits after the Defendants left Honduras,
18 abandoning the project. The Defendants left Honduras when they realized that further
19 loans would not be forthcoming without their making progress on the project.
20

21 21. By this time, as the Defendants knew, the Plaintiff was experiencing acute financial
22 difficulties, created and or exacerbated by their own under-performance on the Project.
23 Even though the Defendants had breached the contract by under-performing and
24 leaving prematurely, the Defendants sued the Plaintiff for their last two years of
25 compensation to which they were plainly not entitled. The Defendants were aware that,
26 because of financial difficulties to which they had contributed, the Plaintiff was not in a
27 position to hire attorneys for the purpose of defending their lawsuit.
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**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; 6
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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1 22. In the course of the Defendants' lawsuit, they judicially admitted that they were
2 partners with the Plaintiff and they judicially admitted that they owed the Plaintiff the
3 "highest good faith and fair dealing in connection with the objectives of the
4 partnership". (Defendants' Complaint in San Francisco Superior Court, par. 32). This
5 document will be filed with the Court and also provided to Defendants' attorney, who
6 already has a copy of it, in discovery.
7

8 23. On June 29, 2010 Plaintiff entered into a stipulated judgment with the Plaintiffs for
9 \$140,000 pursuant to a Settlement Agreement ("the Settlement"). The Settlement
10 contained a confidentiality provision, paragraph 14. Paragraph 14 prohibited either
11 party from disclosing, *directly or indirectly* any "Settlement Information" (emphasis
12 added). This document will be filed with the Court and also provided to Defendants'
13 attorney, who already has a copy of it, in discovery.
14

15 24. The Defendants specifically breached their fiduciary and contractual duties to the
16 Plaintiff during the course of the Plaintiff's bankruptcy in 2014. The Property was very
17 difficult to sell at that time. Land is extremely difficult to sell quickly in general, and
18 land of this size and in a price range of \$500,000 or higher would be especially difficult
19 to sell in Honduras, even without time constraints.
20

21 25. It is extremely likely that the Plaintiff's Bankruptcy Trustee would have been unable to
22 sell the Property with the result that title and control would have reverted to the
23 Plaintiff at the close of the bankruptcy. The Plaintiff had been successful on other
24 occasions in compelling his Bankruptcy Trustee to abandon property and he had a
25 reasonable expectation of being successful in this instance.
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1 26. However, the Defendants intervened, and in a complete breach of fiduciary duties to
2 Plaintiff helped the Trustee sell the subject property to a third party, unlawfully and
3 improperly charging a commission; unlawfully and improperly misusing the
4 confidential information of the Plaintiff; and unlawfully and improperly disclosing
5 Settlement Information in the process.. As the Trustee or Trustee's attorney will testify
6 during the trial, without Defendants' interference Trustee almost certainly would have
7 abandoned the property. Indeed, the Trustee and Trustee's attorney did plan to abandon
8 the property, or more legally properly the Honduran Sociedad Anonima which owned
9 the property, after they discovered that there was \$500,000 of debt against the property.
10 Thus, if it were not for the actions of Mr. Martin, the Plaintiff would have been able to
11 develop the property and sell the lots and garner over \$10 million in revenue.
12

13
14 27. Upon information and belief, Martin falsely represented himself as a real estate agent or
15 broker. Martin was paid a commission on the sale of the property, but Plaintiff is
16 unaware that Martin is a real estate broker or an agent working for and through a
17 licensed real estate broker.
18

19 28. After Plaintiff obtained permits (since the Defendants had never successfully
20 accomplished their first important task in their project: namely, to obtain permits for a
21 residential subdivision) the land grew more valuable. With infrastructure in, developed
22 property would have sold for a multiple of that amount, in excess of ten million dollars,
23 as per the licensed and bonded appraiser who has evaluated the prospects and values.
24 Even without infrastructure, the property was worth a significant amount. The
25 Defendants' goal was to maliciously harm the Plaintiff and pocket an improper and
26 unlawful commission on the sale.
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**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; 8
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING; INDUCING BREACH OF TRUSTEE;
BREACH OF FIDUCIARY DUTY**

Count I - Breach of the Settlement - Martin

29. Plaintiff realleges paragraphs 1-28 as if fully set out herein.

30. The Defendant Martin breached the Settlement by gratuitously disclosing Settlement Information directly and indirectly to the Trustee and to the extent that the Defendant misused the Plaintiff's confidential information to effect the sale and solicited a bribe or kickback for producing a buyer for the property.

31. The Plaintiff seeks rescission of the Settlement by reason of the Defendants' material breach thereof.

Count II – Breach of the Covenant of Good Faith & Fair Dealing – Martin

32. Plaintiff realleges paragraphs 1-28 as if fully set out herein.

33. The Plaintiff performed all conditions required of him by the Settlement.

34. Defendant Martin interfered with the Plaintiff's right to receive the benefits of the Settlement, by: (a) gratuitously disclosing Settlement Information directly and indirectly to the Trustee; (b) misusing the Plaintiff's confidential information to effect the Trustee sale; (c) and soliciting a bribe and/or kickback for producing a buyer for the property.

35. Plaintiff has been damaged by the Defendants' breaches of contract by the loss of amounts loaned to the Defendants and the loss of the value of the Property sold by the Trustee and the loss of time and related opportunity costs imposed by the Defendants' fraudulent lawsuit.

**COMPLAINT FOR BREACH OF CONTRACT; INCLUDING BREACH OF TRUST;
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Count III – Inducing Fiduciary Breach of Trustee – Martin

36. Plaintiff realleges paragraphs 1-28 as if fully set out herein.

37. Defendant Martins' request for a "commission" in connection with the sale of the property violated 18 USC 152 (6) as the solicitation of a bribe from the Trustee.

38. The Trustee breached her duty by paying Martin an unlawful commission which was in fact a bribe.

39. Defendant Martin wrongfully induced the Trustee to breach her trust and in doing so was acting entirely for his own financial gain and in derogation of his judicially admitted duty to the partnership. *City of Atascadero v. Merrill Lynch, Fenner & Smith*, (1998) 68 Cal.App.4th 462.

40. The Plaintiff has been damaged by Martin's and Lightfoot's inducement of breach of trust in that he loaned monies to the Defendants (not repaid); he lost the (actual, full) value of the Property sold by the Bankruptcy Trustee with the aid of Martin and Lightfoot, and incurring opportunity costs and the loss of his time. Had Martin and Lightfoot not helped the bankruptcy trustee sell the subject property, Plaintiff could have gleaned 8 digits of revenue from the property. A licensed and bonded appraiser will testify at trial as to the full revenues and profits that could have been gained in developing and selling the property.

Count IV Breach of Fiduciary Duty – Martin & Lightfoot

41. Plaintiff realleges paragraphs 1-26 as if fully set out herein.

42. The Defendants, as Plaintiff's agents, owed Plaintiff a fiduciary duty to deal fairly and honestly with him and to not elevate their personal interests above the interests of the Partnership. The Defendants judicially admitted in their state court complaint that they had a duty to act in the highest good faith in connection with the objectives of the partnership which was **not** dissolved by the Stipulation of settlement.

43. The Defendants breached their fiduciary duty to the Plaintiff in at least the following ways:

- (a) By not actually working towards the goals of the project in Honduras. Defendants essentially began their retirement years early, but accepted Plaintiff's loans and made assurances of future progress.
- (b) By suing the Plaintiff at a time they knew him to be financially vulnerable for monies to which they knew they were not entitled;
- (c) By assisting the Trustee (Janina Hoskins) in Plaintiff's bankruptcy in selling the Property to the Plaintiff's detriment.

44. The Plaintiff has been damaged by Martin's and Lightfoot's fiduciary breaches in that he loaned monies to the Defendants (not repaid); he lost the (actual, full) value of the Property sold by the Bankruptcy Trustee with the aid of Martin and Lightfoot, and incurring opportunity costs and the loss of his time. Had Martin and Lightfoot not helped the bankruptcy trustee sell the subject property, Plaintiff could have gleaned 8 digits of revenue from the property. A licensed and bonded appraiser will testify at trial as to the full revenues and profits that could have been gained in developing the property.

**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; ¹¹
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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BREACH OF FIDUCIARY DUTY**

1 45. Further, the Plaintiff has also lost any further profits that could have been made over
2 the years by reinvesting funds from the sales of this Property and thus been further
3 damaged ("further opportunity cost").
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6 **Count V Breach of Contract – Martin & Lightfoot**
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8 46. Plaintiff realleges paragraphs 1-28 as if fully set out herein.
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10 47. By their acts of nonfeasance, e.g. non-performance of duties, repudiation of contractual
11 duties mid-way through the contract and misfeasance, including fraudulently filing suit
12 to recover unearned compensation and also helping the Trustee sell the property to a
13 third party, the Defendants materially breached the parties' Partnership Agreement.
14

15 48. Plaintiff has been damaged by the Defendants' breaches of contract by the loss of
16 amounts loaned to the Defendants and the loss of the value of the Property sold by the
17 Trustee and the loss of time and related opportunity costs imposed by the Defendants'
18 fraudulent lawsuit.

19 49. Had the Defendants carried out their required acts and duties in the contract, Plaintiff
20 could have gleaned 8 digits of revenue from property sales of the 150+ lots it was
21 subdivided into.
22

23 50. Further, the Plaintiff has also lost any further profits ("further opportunity cost") that
24 could have been made over the years by reinvesting funds from the sale of this
25 development Property and thus been further damaged.
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**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; ¹²
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING; INDUCING BREACH OF TRUSTEE;
BREACH OF FIDUCIARY DUTY**

Count VI. Misappropriation of Trade Secrets CCP 3426 et seq Martin & Lightfoot

51. The Plaintiff realleges paragraphs 1-28 as if fully set out herein.

52. Pursuant to CCP 3426.1(b)(ii) the Defendants acquired confidential information belonging to Plaintiff under circumstances (e.g. a fiduciary relation) giving rise to a duty to maintain its secrecy or limit its use.

53. Specifically, the Plaintiff's business model was novel and proprietary in at least the following respects:

- (a) The Plaintiff's methods for identification, valuation, and acquisition of properties;
- (b) The Plaintiff's precise sequence of preliminary steps to develop properties that (i) increased their value for further development but (ii) limited the Plaintiff's initial investment;
- (c) The Plaintiff's utilization of his credibility and branding to persuade some sellers to finance his development activities
- (d) Acquisition of distressed properties and distressed debt, including non-performing notes and loans.

54. The Plaintiff's Business Methods were valuable and concrete enough to be protectable under California law. The Plaintiff had, in effect, created an intermediary position between pure land speculation and development that differed from the function any other broker, developer, or investor served. The Plaintiff had identified those preliminary steps of property improvement that delivered the most appreciation in value for the least investment. Further, the Plaintiff's exploration of concepts of purchasing distressed properties and distressed notes and mortgages to acquire properties or cash flow also are deemed to provide exponential returns on investment when properly applied.

1 55. The Plaintiff took all reasonable precautions to preserve the confidentiality of
2 Plaintiff's Trade Secrets. The Plaintiff only disclosed Plaintiff's Trade Secrets in a
3 contractual context such as the Partnership Agreement that created a fiduciary relation.

4
5 56. The Defendants misappropriated the Plaintiff's trade secrets in connection with their
6 solicitation of a bribe from the Trustee and subsequent fire sale of the property.

7 57. Upon information and belief, the Defendants conjunctively misappropriated the
8 Plaintiff's Trade Secrets by inducing disclosure from the Plaintiff in the context of a
9 fiduciary and contractual relation and then misappropriating the value by utilizing them
10 in further investments made by the Defendants.
11

12 58. The Plaintiff has been damaged by the Defendants' acts of misappropriation by the loss
13 of his rightful profits (or reasonable royalty fee) for the misapplication of Plaintiff's
14 Business Method to later transactions by Defendants.
15

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17 **Count VII Accounting**
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19 59. Plaintiff realleges paragraphs 1-28 as if fully set out herein.

20 60. Plaintiff, as partner and principal, is entitled to an accounting of all funds misspent by
21 the Defendants including living expenses, loans made, and sums converted in relation
22 to the wrongful sale of the Property.
23

24 61. Plaintiff is also entitled to an accounting of all profits obtained by the Defendants as a
25 result of their misappropriation of Plaintiff's Trade Secrets and/or other trade secrets of
26 Plaintiff in transactions that post-date the parties' partnership. If applicable, the
27 Plaintiff should be compensated with those profits.
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**COMPLAINT FOR BREACH OF CONTRACT; INCLUDING BREACH OF TRUST; ¹⁴
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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1 62. Further, the Plaintiff has also lost any further profits that could have been made over
2 the years by reinvesting funds from the sale of this development Property (“further
3 opportunity cost”) and thus been further damaged, and the Accounting should do its
4 best to calculate those reasonable amounts, using the assistance of licensed professional
5 experts.
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9 [rest of this page blank; Prayer for Relief follows on the next page]
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**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; ¹⁵
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
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BREACH OF FIDUCIARY DUTY**

WHEREFORE, Plaintiff prays that this Court enter Judgement:


- (a) As to Count I for Breach of the Settlement, for Rescission of the Settlement Agreement;
- (b) As to Count II for Breach of the Covenant of Good Faith and Fair Dealing for damages caused by Defendant's bad faith in an amount to be determined at trial plus the imposition of punitive damages for the fraudulent nature of the breach;
- (c) As to Count III for inducing breach of trust, for damages caused by the Defendant's inducement in an amount to be determined at trial, plus the imposition of punitive damages in an amount sufficient to punish and deter the Defendant from inducing breach of trust in the future;
- (d) As to Count IV for breach of Fiduciary Duty, for damages caused by Defendants' acts of fiduciary breach, in an amount to be determined at trial, plus the imposition of punitive damages in an amount sufficient to punish and deter similar wrongful acts by Defendants in the future;
- (e) As to Count V for damages caused by Defendants' breaches of contract to be proved at trial;
- (f) As to Count VI, for damages caused by Defendants' acts of misappropriation, including lost profits and/or a reasonable royalty rate for all transactions in which Plaintiff's secrets were misappropriated in an amount to be proved at trial plus double damages for wilfulness pursuant to 3426.3;
- (g) As to Count VII for an accounting to determine the exact amounts misappropriated and converted by Defendants, as well as the current balance of Defendants' debt to Plaintiff.

**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; ¹⁶
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BREACH OF FIDUCIARY DUTY**

1 The accounting should also take in to account the full damages, including lost revenue
2 and profits from Defendants' breaches and misappropriation. Further, the accounting
3 should also calculate the "future opportunity cost".
4

5 (h) And for such other and further relief as this Court deems just.
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7 Respectfully submitted, on September 21st, 2018
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11 Carl A. Wescott, *pro se*
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**COMPLAINT FOR BREACH OF CONTRACT; INCUDING BREACH OF TRUST; 17
BREACH OF SETTLEMENT; BREACH OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING; INDUCING BREACH OF TRUSTEE;
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